

Michael Goldberg
mmgoldberg@glancylaw.com
Lionel Z. Glancy (#134180)
lglancy@glancylaw.com
GLANCY BINKOW & GOLDBERG LLP
1925 Century Park East, Suite 2100
Los Angeles, CA 90067
Telephone: (310) 201-9150
Facsimile: (310) 201-9160

JS-6

Gregory S. Asciolla (*pro hac vice*)
gasciolla@labaton.com
Hollis L. Salzman (*pro hac vice*)
hsalzman@labaton.com
William V. Reiss (*pro hac vice*)
wreiss@labaton.com
LABATON SUCHAROW LLP
140 Broadway
New York, NY 10005
Telephone: (212) 907-0700
Facsimile: (212) 818-0477

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ACE MARINE RIGGING & SUPPLY,
INC.,

Plaintiff,

v.

VIRGINIA HARBOR SERVICES,
INC., ET AL.,

Defendants.

No. SACV11-00436-GW (FFMx)

**RULE 54(b) FINAL JUDGMENT
ORDER AS TO: (1) SHI, INC., SHI,
INC. AND FRANK MARCH; AND
(2) URETHANE PRODUCTS
CORPORATION**

Date: September 24, 2012

Time: 8:30 A.M.

**Judge: Honorable George H. Wu
Ctvm: 10**

1 The Court has considered Plaintiff Ace Marine Rigging & Supply, Inc.'s
2 ("Plaintiff") Motion for Final Approval of Class Action Settlements ("Foam-Filled
3 Fenders and/or Buoys Settlements") with Defendants: (1) SII, Inc., SHI, Inc. and
4 Frank March (collectively, "Seaward Defendants"); and (2) Urethane Products
5 Corporation ("UPC") (together with Seaward Defendants, "Settling Defendants"),
6 and has held a duly-noticed final approval hearing on September 24, 2012. The
7 Court expressly finds, pursuant to Rule 54(b) of the Federal Rules of Civil
8 Procedure, that there is no just reason for delay, and therefore expressly directs the
9 entry of Final Judgment as to the Settling Defendants:

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

- 11 1. The Court has jurisdiction over the subject matter of this litigation.
- 12 2. Terms used in this Final Judgment Order which are defined in the
13 Settlement Agreements between the Plaintiff and the Settlement Classes on the one
14 hand and the Settling Defendants on the other hand are, unless otherwise defined
15 herein, used in this Final Judgment Order as defined in the Settlement Agreements.
- 16 3. The Court finds that the Foam-Filled Fenders and/or Buoys
17 Settlements were based on vigorous arm's-length negotiations, which were
18 undertaken in good faith by counsel with significant experience litigating antitrust
19 class actions.
- 20 4. The Court finds that due and adequate notice was provided pursuant
21 to Rule 23 of the Federal Rules of Civil Procedure to all members of the Settlement
22 Classes certified herein, notifying the Settlement Classes of, *inter alia*, the
23 pendency of the above-captioned action and the proposed Foam-Filled Fenders and
24 Buoys Settlements with the Settling Defendants. The notice provided was the best
25 notice practicable under the circumstances and included individual notice by First
26 Class mail to all members of the Settlement Classes who could be identified
27 through reasonable effort as well as notice published in the *Investor's Business*
28

1 *Daily*. Notice fully complied in all respects with the requirements of Rule 23 of
2 the Federal Rules of Civil Procedure and the due process requirements of the
3 Constitution of the United States.

4 5. With respect to the Seaward Defendants Settlement Agreement, this
5 Court certifies the following class for settlement purposes only:

6 All persons and entities (but excluding Defendants, their
7 predecessors, parents, subsidiaries, affiliates, and co-
8 conspirators and United States federal government
9 entities) who purchased Foam-Filled Fenders and/or
10 Buoys in the United States directly from the Seaward
11 Defendants, Named Co-Conspirators, any other
12 Defendant or any of their predecessors, parents,
13 subsidiaries, or affiliates at any time during the period
14 from and including June 1, 2000 to and including
15 December 31, 2005.
16

17 With respect to the UPC Settlement Agreement, the Court certifies the following
18 class for settlement purposes only:

19 All persons and entities (but excluding Defendants, their
20 predecessors, parents, subsidiaries, affiliates, and co-
21 conspirators and United States federal government
22 entities) who purchased Foam-Filled Fenders and/or
23 Buoys in the United States directly from UPC, Named
24 Co-Conspirators, any other Defendant or any of their
25 predecessors, parents, subsidiaries, or affiliates at any
26 time during the period from and including June 1, 2000
27 to and including December 31, 2005.
28

1 6. For the purposes of this Order, “Foam-Filled Fenders” means
2 structural protection marine fenders fabricated from an elastomer shell filled with
3 closed-cell polyethelene foam, and related ancillary products, which are typically
4 used as a cushion between ships and either fixed structures such as docks or piers,
5 or floating structures such as other ships. “Foam-Filled Buoys” means buoys
6 fabricated from an elastomer shell filled with closed-cell polyethelene foam, and
7 related ancillary products, which are used in a variety of applications, including as
8 channel markers and navigational aids. “Foam-Filled Fenders and/or Buoys”
9 means Foam-Filled Fenders and/or Foam-Filled Buoys.

10 7. The Court finds that certification of the Settlement Classes is
11 appropriate because:

- 12 (a) The Settlement Classes are so numerous that joinder of all
13 members is impracticable, satisfying the requirement of Rule
14 23(a)(1);
- 15 (b) There are questions of law or fact common to the Settlement
16 Classes, satisfying the requirements of Rule 23(a)(2), including:
17 (1) did Defendants conspire to raise, fix, maintain or stabilize
18 the prices, rig bids or allocate markets or customers of Foam-
19 Filled Fenders and/or Buoys purchased in the United States in
20 violation of Section 1 of the Sherman Act; (2) the period of
21 time the conspiracy operated; and (3) whether the conspiracy
22 raised, fixed, maintained or stabilized the prices of Foam-Filled
23 Fenders and/or Buoys;
- 24 (c) The claims of Settlement Class Representative Board of
25 Commissioners of Ace Marine Rigging & Supply, Inc. are
26 typical of the claims of the Settlement Classes, satisfying the
27 requirement of Rule 23(a)(3);
- 28

- 1 (d) The Settlement Class Representative will fairly and adequately
2 protect the interests of the Settlement Classes, satisfying the
3 requirements of Rule 23(a)(4); and
- 4 (e) Questions of law and fact common to members of the
5 Settlement Classes, as set forth above, predominate over
6 questions affecting only individual members, and a class action
7 is superior to other methods available for the fair and efficient
8 adjudication of the controversy, satisfying the requirements of
9 Rue 23(b)(3).

10 8. The Court's certification of the Settlement Classes as provided herein
11 is without prejudice to, or waiver of, the rights of any Defendant other than the
12 Settling Defendants to contest certification of any other proposed class. The
13 Court's findings in this Final Judgment Order shall have no effect on the Court's
14 ruling on any motion to certify any litigation class and no party may cite or refer to
15 the Court's approval of the Settlement Classes as persuasive or binding authority
16 with respect to any motion to certify such a class.

17 9. The Court finds that no Settlement Class Members have timely and
18 validly requested to be excluded from the Settlement Classes.

19 10. The Court finds that the Settlement Agreements with the Settling
20 Defendants are fair, reasonable and adequate to the Settlement Classes within the
21 meaning of Rule 23 of the Federal Rules of Civil Procedure. The Settlement
22 Agreements are hereby approved pursuant to Rule 23(e) of the Federal Rules of
23 Civil Procedure.

24 11. The Court finds that the escrow accounts described in the Seaward
25 Defendants Settlement Agreement and the UPC Settlement Agreement are
26 qualified settlement funds ("QSF") pursuant to Internal Revenue Code Section
27 468B and the Treasury Regulations promulgated thereunder.
28

1 12. All claims of Plaintiff and the Settlement Classes that were asserted
2 against the Settling Defendants in the Complaint in the above-captioned Action are
3 dismissed with prejudice, and, except as provided for in the Settlement
4 Agreements, without costs.

5 13. Plaintiff, Settlement Class Members, their predecessors, successors,
6 past and present parents, subsidiaries, affiliates, divisions, and departments, and
7 each of their respective past and present officers, directors, employees, agents,
8 attorneys, servants, and representatives, and the predecessors, successors, heirs,
9 executors, administrators, and assigns of each of the foregoing (“Releasing
10 Parties”) are permanently barred and enjoined from prosecuting against the
11 Released Parties, as defined in the respective Settlement Agreements, any and all
12 claims, demands, actions, suits, and causes of action, damages, liabilities of any
13 nature, including without limitation costs, expenses, penalties, and attorneys’ fees,
14 whether class, individual, or otherwise in nature, that Releasing Parties ever had,
15 now have, or hereafter can, shall, or may have directly, representatively,
16 derivatively or in any other capacity against the Released Parties, whether known
17 or unknown, suspected or unsuspected, in law or equity, concerning the pricing,
18 selling, discounting, marketing, manufacturing, or distribution of Foam-Filled
19 Fenders and/or Buoys in the United States, which arise under and/or relate to any
20 United States federal or state antitrust, unfair competition, unfair practices, price
21 discrimination, unitary pricing, trade practice, or civil conspiracy law, including,
22 without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 et seq., based in
23 whole or in part on the facts, occurrences, transactions, or other matters alleged in,
24 or that could have been alleged in the Class Action Complaint filed in *Ace Marine*
25 *Rigging Supply, Inc. v. Virginia Harbor Services, Inc. et al.*, No. SACV11-00436
26 and the Consolidated Amended Class Action Complaint filed in *In re Marine*
27 *Products Antitrust Litigation*, No. CV10-2319-GW (FFMx) (the “Released
28

Claims”), provided, however, that nothing herein shall release: (1) any claims made by purchasers who are solely indirect purchasers of Foam-Filled Fenders and/or Buoys as to such indirect purchases; (2) claims involving any negligence, breach of contract, bailment, failure to deliver lost goods, damaged or delayed goods or similar claim relating to ; and/or (3) claims under laws other than those of the United States.

14. Each member of the Settlement Classes has expressly agreed to waive and release, and shall be deemed to have waived and released, any and all provisions, rights and benefits conferred by Section 1542 of the California Civil Code (“Section 1542”), which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Cal. Civ. Code § 1542 (West).

15. Each member of the Settlement Classes has expressly agreed to waive and release, and shall be deemed to have waived and released, any and all provisions, rights and benefits conferred by Section 20-7-11 of the South Dakota Codified Laws (“Section 20-7-11”), which reads:

20-7-11. Unknown claims not released by general release

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

1 S.D. Codified Laws § 20-7-11.

2 16. Each member of the Settlement Classes may hereafter discover facts
3 other than or different from those which he, she or it knows or believes to be true
4 with respect to the claims which are the subject matter of the provisions of this
5 paragraph, but each of those Settlement Class Members has expressly waived and
6 has fully, finally and forever settled and released all rights and benefits existing
7 under (i) Section 1542, Section 20-7-11 or any equivalent, similar or comparable
8 present or future law or principle of law of any jurisdiction, and (ii) any law or
9 principle of law of any jurisdiction that would limit or restrict the effect or scope of
10 the provisions of the release set forth above, without regard to the subsequent
11 discovery or existence of such other or different facts.

12 17. The Settling Defendants shall have no obligation for attorneys' fees,
13 costs or expenses.

14 18. Nothing in this Final Judgment Order or the Settlement Agreements
15 and no aspect of the settlements or negotiations thereof are or shall be deemed or
16 construed to be an admission or concession of any violation of any statute or law or
17 of any liability or wrongdoing by the Settling Defendants or of the truth of any of
18 the claims or allegations in any of the complaints in the Action or any other
19 pleading, and evidence thereof shall not be discoverable or used, directly or
20 indirectly, in any way, whether in the Action or in any other action or proceeding
21 other than to enforce the terms of this Final Judgment Order or the Settlement
22 Agreements.

23 19. Without affecting the finality of the Final Judgment in any way, this
24 Court hereby retains continuing jurisdiction for the purposes of, *inter alia*,
25 implementing and enforcing the Settlement Agreements (including any issue that
26 may arise in connection with the formation and/or administration of the QSFs),
27 entering orders regarding the disbursement of the Settlement Amounts (as defined
28

1 in the Settlement Agreements) to the Settlement Classes and to Settlement Class
2 Counsel, and adjudicating the Action with respect to Plaintiff's claims asserted
3 against the Defendants.
4

5 DONE AND ORDERED in Chambers in Los Angeles, California this 29th
6 day of November, 2012.

7 

8
9 HONORABLE GEORGE H. WU
UNITED STATES DISTRICT JUDGE